

REMARKS

Claims 1-16 are currently pending in this application. By this Amendment, claims 1, 12, 15 and 16 have been amended.

§ 102 Rejection of the Claims

Claims 1-16 have been rejected under 35 U.S.C. § 102 as anticipated by Haller, U.S. Patent Application Publication No. 2002/0013613. Applicant traverses this rejection.

The claims have been amended in view of the Examiner's positions concerning patentable weight given to recitations of "external defibrillator" and the "non-functional descriptive material" nature of certain claim limitations.

Independent claim 1 has been amended to recite a reimbursing step. This step requires reimbursing expenses incurred as a result of defibrillator usage on a patient to whom the operator has no duty to provide defibrillator usage. This claim limitation is recited positively as a method step and so carries patentable weight. Haller does not teach a step of reimbursing the expenses incurred as a result of defibrillator usage on a patient to whom the operator has no duty to provide defibrillator usage.

Independent claim 12 has been amended to recite a step of identifying operators who make external defibrillators publicly available, and that reimbursement to one of the plurality of defibrillator operators is for the costs associated with defibrillator use in response to another party to whom the operator owes no duty to provide a defibrillator. These requirements are recited as positive claim limitations (method steps) and not as intended uses. Haller does not teach a step of identifying operators of publicly available external defibrillators, nor does it teach a step of reimbursing the expenses incurred as a result of defibrillator usage on another party to whom the operator owes no duty to provide a defibrillator.

Apparatus claims 15 and 16 have been amended to add limitations that the compensating means (claim 15) and third computing means (claim 16) are means for compensating or providing reimbursement of expenses or costs incurred too use an

external defibrillator on a patient to whom the owner/operator has no duty to provide use of an external defibrillator. The Haller reference does not teach a computing system or data processing system capable of providing the compensation or reimbursement required by these claims.

The subject matter of the claims as amended is not anticipated by Haller. Haller's automated billing and payment system is one in which the patient or the patient's insurance carrier (an entity with which the patient has a pre-existing relationship governing financial responsibility) is billed by a service provider with whom the patient has a pre-existing relationship. The present application describes a system for a different situation which is unique in the medical field, where a cost is incurred as a result of use of a medical device on a person who could be a random passer-by.

The cost is incurred by someone who has no duty toward or relationship to the patient. The issues surrounding costs and financial responsibility for a public access defibrillation program are unique and distinct from those surrounding an implanted defibrillator. The patient on whom a publicly accessible external defibrillator is used may be a member of the public struck with sudden cardiac arrest while walking through an airport in which AEDs are made available by airport management. Due to the emergency situation in which an external defibrillator is used, there is generally no opportunity to receive an explicit consent to treatment from the patient or to establish an agreement from the patient to pay for costs of the service rendered. In contrast, the "owner" of the implanted device of Haller is also the patient. The implanted device of Haller is generally placed in the patient in a planned procedure after medical consultation and establishment of an agreement as to financial responsibility for the services being rendered. Haller does not disclose any methods or systems involving an external defibrillator, nor does it disclose any situation in which an operator has a relationship providing for reimbursement of costs incurred for treatment of a completely unrelated party.

The above-discussed distinctions are not merely a matter of an intended use. The method claims as amended positively recite claim elements (i.e., steps in a claimed method) not

found in the cited reference. The apparatus claims 15 and 16 as amended recite a structure not found in the cited art.

For at least these reasons, the subject matters of claim 1-16 are not anticipated by Haller.

CONCLUSION

In view of the foregoing amendments and argument, Applicants respectfully request reconsideration and allowance of the claims as all rejections have been overcome. Early notice of allowability is kindly requested.

Applicant believes that no fee is required to process this Amendment. If any fee is required, please charge such fee to deposit Account No. 13-2546.

Respectfully submitted,

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